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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

THOMAS J. GRADE, M.D.,

Holder of License No. 10424
For the Practice of Allopathic Medicine in the
State of Arizona

Docket No. **07A-10424-MDX**

Case No. MD-07-0309A

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER FOR
REVOCATION OF LICENSE.**

On August 8, 2007 this matter came before the Arizona Medical Board ("Board") for oral argument and consideration of the Administrative Law Judge ("ALJ") Diane Mihalsky's proposed Findings of Fact and Conclusions of Law and Recommended Order involving Thomas J. Grade, M.D. ("Respondent"). Respondent was notified of the Board's intent to consider this matter at the Board's public meeting. Respondent did not appear and was not represented by counsel. The State was represented by Assistant Attorney General Dean Brekke. Christine Cassetta, Assistant Attorney General with the Solicitor General's Section of the Attorney General's Office provided legal advice to the Board.

The Board having considered the ALJ's recommended decision and the entire record in this matter hereby issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Arizona Medical Board ("Board") is the authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of License No. 10424 for the practice of allopathic medicine in Arizona.

3. On June 22, 1991 Respondent and the Board entered into an agreement in which Respondent agreed that, among other things, he would participate in the Monitored Aftercare Treatment Program, as well as a 12-step recovery program for substance abuse that his

1 treating therapist determined to be appropriate, that he would abstain completely from the
2 consumption of alcoholic beverages, that he would submit to random biological fluid testing at the
3 Board's request, that he would maintain a log of any medications and make the log available to the
4 Board upon request, that he would submit to mental, physical, or medical competency
5 examinations as directed by the Board, and that he would appear in person before the Board for
6 interviews upon request.

7 4. On October 16, 1993 the Board determined Respondent had been successfully
8 rehabilitated and terminated the June 22, 1991 monitoring agreement.

9 5. The Board summarily restricted Respondent's license on December 8, 2005.
10 The events leading to the December 2005 restriction and the Board's action summarily restricting
11 Respondent's license are not at issue in this matter.

12 6. On April 26, 2007 the Board received a report from a confidential informant that
13 Respondent had been arrested on April 25, 2007 for domestic violence/assault and that alcohol
14 was involved in the incident leading to his arrest.

15 7. The Board obtained Gilbert Police Department Incident/Investigation Report for
16 Case No. 07-000007160. The report indicated Respondent's wife called police on April 25, 2007
17 at 6:04 p.m., after he pushed her. The alleged assault had occurred during an attempted
18 intervention in his drug and alcohol abuse by his wife, her daughter, Respondent's brother, and
19 two other people at Respondent and his wife's home in Gilbert, Arizona.

20 8. The police report indicated further that Respondent refused to respond to
21 officers' attempts to establish communication and barricaded himself in a room in the basement.
22 Police officers eventually had to break down the door and subdue Respondent with a Taser gun
23 so they could handcuff and arrest him. The police report made no mention about Respondent
24 being impaired or under the influence of any substance.

1 9. Police called the Town of Gilbert Fire Department Emergency Medical Services
2 personnel. Report No. 07-29264 indicates Respondent admitted to paramedics that he had four
3 ounces of Brandy throughout the day and he refused to go to the hospital.

4 10. On April 27, 2007 Kathleen Muller of the Board's Physician Health Program
5 attempted to call Respondent at his home telephone number. She received the message on the
6 recorder that the "memory was full." Ms. Muller called Respondent's home number several hours
7 later and spoke to his wife, who told her that Respondent did not live at the residence "at that
8 moment" and provided an alternate contact number for Respondent.

9 11. On April 27, 2007 Ms. Muller called Respondent on the alternate telephone
10 number and left the message that he was required to come to the Board's offices that afternoon at
11 3:00 p.m. for an interview regarding his arrest.

12 12. On April 27, 2007 Ms. Muller sent a letter to Respondent at his address of record
13 in Gilbert, Arizona. Ms. Muller informed him that the Board had opened an investigation into his
14 possible statutory violations in the April 25, 2007 domestic violence incident and requested he
15 provide a narrative response to the allegations of domestic violence/assault and substance abuse
16 no later than May 4, 2007.

17 13. On April 27, 2007 Ms. Muller sent a second letter to Respondent, requesting him
18 to meet with the Board on that same date at 3:00 p.m. to discuss the allegations of domestic
19 violence/assault and substance abuse. Ms. Muller attached to her letter the Board's April 27, 2007
20 order, commanding Respondent to appear at its offices on Friday, April 27, 2007 at 3:00 p.m.

21 14. On April 30 and May 2, 2007 Ms. Muller left telephone messages for Respondent
22 at his home and the alternative number, asking him to contact Board staff immediately.

23 15. On May 2, 2007 the Board entered an interim order for inpatient and
24 evaluation/treatment that required Respondent to undergo an inpatient evaluation at the Betty
25

1 Ford Center within fourteen days. The Board mailed the order to Respondent at his address of
2 record, his home address in Gilbert.

3 16. On May 4, 2007 Respondent called Board staff. Ms. Muller described the
4 telephone call in her report as follows:

5 He stated that he just received the April 27, 2007 letter which
6 requested that he appear at the Board for an interview. Staff told
7 Dr. Grade that on May 2, 2007 an Interim Order for Inpatient
8 Evaluation was mailed to his home. He stated that he was unable to
9 retrieve his mail from his home as there was a restraining order,
10 and that he was in Northern Arizona living out of his car. Dr. Grade
11 then stated that he did not understand why he needed to attend an
12 inpatient evaluation when his arrest did not involve alcohol. Staff
13 attempted to get Dr. Grade to go to a local Kinko's where a copy of
14 the Interim Order could be faxed to him. Dr. Grade stated that he
15 was not going to go to a Kinko's, nor was he going to undergo an
16 inpatient evaluation. He further stated that he did not care if he ever
17 practiced medicine in the State of Arizona again. Board staff asked
18 Dr. Grade if he would like to surrender his license. He stated that he
19 needed to seek legal counsel to answer that question and
20 requested that he be allowed to call back on Monday. Dr. Grade
21 then hung up, ending the conversation.

22 17. On May 7 and May 15, 2007 Ms. Muller left messages on Respondent's
23 alternative telephone number, asking him to contact her as soon as possible. Respondent did not
24 respond to these messages, did not undergo an inpatient evaluation, and did not provide any
25 written response to the allegations of domestic violence/assault and substance abuse.

18 18. On May 16, 2007 Ms. Muller on behalf of the Board sent a letter to Respondent
19 at his home address of record in Gilbert, Arizona. Ms. Muller informed Respondent that the Board
20 was concerned about his possible statutory violations in violating Board orders by failing to appear
21 for the April 27, 2007 investigational interview and by failing to obtain an inpatient evaluation, in
22 addition to possible statutory violations for the domestic violence/assault incident and substance
23 abuse. Ms. Muller asked Respondent to respond to the additional possible violations no later than
24 May 18, 2007.

1 19. On May 16, 2007 Ms. Muller on behalf of the Board sent a second letter to
2 Respondent at his home address of record, informing him that the Board would be considering a
3 summary action against his license at its meeting on May 18, 2007 at 9:45 a.m.

4 20. On May 17, 2007 Ms. Muller contacted Respondent by telephone. She recorded
5 most of their ten- to fifteen-minute conversation and the Board had the transcript of the
6 conversation admitted into evidence at the hearing. Respondent said he was "in hiding" on the
7 east side of Phoenix with two bodyguards. Respondent said he "was just about killed in the county
8 lockup," where he had been "tasered repeatedly." When he was released from jail, his "heart rate
9 was 200." Afterwards, he had suffered a heart attack.

10 21. Respondent also told Ms. Muller that the April 25, 2007 domestic violence/
11 assault incident had occurred during "an organized sneak attack" perpetrated by his wife and her
12 professional friends, after he had served her with divorce papers. At the time, he had been treating
13 a patient in his daughter's bedroom. Respondent repeatedly denied that he was under the
14 influence of alcohol during the April 25, 2007 incident, but said nothing about whether he was
15 under the influence of any drug.

16 22. In the May 17, 2007 conversation, Respondent finally provided Ms. Muller with
17 an alternative address in Apache Junction, Arizona. He then hung up.

18 23. Respondent did not appear at the Board's May 18, 2007 meeting. After having
19 considered Ms. Muller's report and testimony, the Board voted to summarily suspend
20 Respondent's license based on the facts that its investigation had uncovered. The Board
21 concluded that Respondent had committed unprofessional conduct under A.R.S. § 32-1401(27)(f),
22 "Habitual intemperance in the use of alcohol or habitual substance abuse," and under A.R.S. § 32-
23 1401(27)(r), "Violating a formal order, probation, consent agreement or stipulation issued or
24 entered into by the board or its executive director under the provisions of this chapter."
25

1 24. The Board thereafter referred the matter to the Office of Administrative Hearings
2 and, on May 23, 2007, issued a Notice of Hearing, setting a hearing on June 26, 2007 at 9:00 a.m.
3 The Board sent a copy of the notice via certified mail to Respondent at the address he had
4 provided in Apache Junction and to his address of record in Gilbert, Arizona. The Post Office
5 returned the signed certified mail receipts for both copies of the Notice of Hearing, indicating
6 delivery.

7 25. On June 25, 2007 at 6:11 p.m., Respondent sent a facsimile to the Office of
8 Administrative Hearings, although it was addressed to the Board's attorney, in relevant part as
9 follows:

10 This letter serves to inform you that I voluntarily surrender my
11 Arizona medical license for medical reasons. I suffered an acute
12 herniated lumbar disc and triamcinolone prompted my alleged
13 behavior. There is no evidence otherwise of illegal behavior. This is
 well documented by my medical records prior to my arrest. I still
 think that medically affected patients should not be sent to prison
 for therapy. I surrender due to my current medical conditions.
 Medically affected patients should be provided therapy.

14 26. The Administrative Law Judge provided a copy of Respondent's letter to the
15 Board's attorney shortly before the scheduled hearing on June 26, 2007. After consulting his
16 client, the Board's attorney elected not to accept Respondent's proffered surrender of license for
17 medical reasons.

18 27. Although the beginning of the duly noticed hearing was delayed fifteen minutes to
19 allow Respondent additional travel time, he neither appeared personally nor through an attorney,
20 did not contact the Office of Administrative Hearings to request a continuance or that the time for
21 the hearing be further delayed, nor present any evidence to defend his license.

22 28. The Board presented Ms. Muller's testimony and had admitted into evidence ten
23 exhibits that established the facts set forth above.

1 **CONCLUSIONS OF LAW**

2 1. The notice of the hearing that the Board mailed to Respondent at the address he
3 provided and at his address of record was reasonable and he is deemed to have received notice
4 of the hearing. A.R.S. § § 32-1451(R); 41-1092.04

5 2. The Board is the duly constituted authority for licensing and regulating the
6 practice of allopathic medicine in the State of Arizona. This matter lies within its jurisdiction. A.R.S.
7 § 32-1401 *et seq.*

8 3. The Board bears the burden of proof and must establish cause to sanction
9 Respondent's license by a preponderance of the evidence. *See* A.R.S. § 41-1092.07(G); A.A.C.
10 R2-19-119; *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837(1952). "A
11 preponderance of the evidence is such proof as convinces the trier of fact that the contention is
12 more probably true than not."¹ A preponderance of the evidence is "[t]he greater weight of the
13 evidence, not necessarily established by the greater number of witnesses testifying to a fact but by
14 evidence that has the most convincing force; superior evidentiary weight that, though not sufficient
15 to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial
16 mind to one side of the issue rather than the other."²

17 4. Respondent's history of substance abuse that led to the 1991 consent order
18 and his required participation in the Board's aftercare program, the attempted intervention by his
19 wife, brother, and friends on April 25, 2007, his confrontational behavior toward the police on that
20 date, his refusal to comply with the Board's order to undergo an inpatient evaluation, and his
21 bizarre statements to Board staff in interviews would cause a reasonable person to strongly
22 suspect that Respondent had relapsed and was again abusing alcohol or another drug.

23 5. A strong suspicion is not sufficient to meet the evidentiary standard of a
24 preponderance of the evidence, although it is sufficient to support an administrative complaint or

25 ¹ Morris K. Udall, *Arizona Law of Evidence* § 5 (1960).

² *Black's Law Dictionary* at page 1220 (8th ed. 1999).

1 criminal charge.³ Nor can any adverse inference that Respondent in fact was abusing alcohol or
2 drugs be drawn from Respondent's failure to appear at the duly noticed hearing and testify, in
3 contrast to the adverse inference that could have been drawn if he had appeared, been called to
4 testify, and refused to answer questions about substance abuse.⁴

5 6. The Board therefore has not established by a preponderance of the evidence
6 that Respondent committed unprofessional conduct under A.R.S. § 32-1401(27)(f)("[h]abitual
7 intemperance in the use of alcohol or habitual substance abuse.").

8 7. The Board has established that Respondent failed to appear at any time for an
9 interview by the Board, in violation of its April 27, 2007 order, and that he failed to undergo an
10 inpatient evaluation, in violation of its May 2, 2007 Confidential Investigative Order. The Board
11 therefore has established that Respondent committed unprofessional conduct under A.R.S. § 32-
12 1401(27)(r) by "[v]iolating a formal order . . . issued or entered into by the board or its executive
13 director under this chapter." These violations furnish cause to summarily suspend or revoke his
14 license under A.R.S. § 32-1451(D) and (M).

15 8. Respondent chose either not to return the Board's repeated messages or to take
16 himself out of contact with the Board. These actions, with his repeated failures to comply with the
17 Board's order and bizarre, confrontational behaviors, show that he is not amenable to regulation at
18 this time.

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22 ³ The "preponderance of the evidence" standard may be compared to the lesser evidentiary standard of "probable
23 cause," that requires "[a] reasonable ground to suspect that a person has committed or is committing" a proscribed
24 act. See *Black's Law Dictionary*, *supra*, at page 1239. "In Arizona, probable cause has been defined as 'such a state of
25 facts as would lead a man of ordinary caution or prudence to believe, and conscientiously entertain a strong
suspicion of guilt.'" *State v. Emery*, 131 Ariz. 493, 505-06, 642 P.2d 838, 850-51 (1982) (emphasis in original;
quoting *In re Dodd v. Boies*, 88 Ariz. 401, 404, 357 P.2d 144, 146 (1960)).

⁴ See *Begay v. Arizona Dept. of Economic Security*, 128 Ariz. 407, 409-10, 626 P.2d 137, 139-40 (App. 1981) (the
Fifth Amendment privilege against self-incrimination in criminal proceedings is not applicable to civil actions and an
administrative agency may draw an adverse inference from an assertion of the privilege).

1 **ORDER**

2 Based on the foregoing, the Board enters the following Order:

3 1. The Board affirms its May 18, 2007 order summarily suspending Respondent
4 Thomas J. Grade, M.D.'s License No. 10424 for the practice of allopathic medicine in the State of
5 Arizona.

6 2. Respondent's License No. 10424 is revoked on the effective date of this Order
7 and Respondent shall return his wallet card and certificate of licensure to the Board.

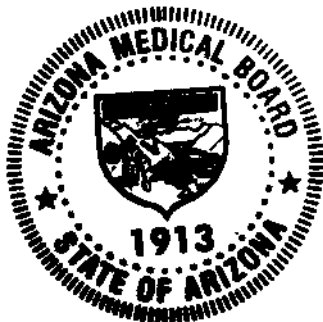
8 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

9 Respondent is hereby notified that he has the right to petition for a rehearing or review
10 by filing a petition with the Board's Executive Director within thirty (30) days after service of this
11 Order. A.R.S. § 41-1092.09. The petition must set forth legally sufficient reasons for granting a
12 rehearing. A.C.C. R4-16-102. Service of this order is effective five (5) days after date of mailing.
13 If a motion for rehearing is not filed, the Board's Order becomes effective thirty-five (35) days after
14 it is mailed to Respondent.

15 Respondent is further notified that the filing of a motion for rehearing is required to
16 preserve any rights of appeal to the Superior Court.

17 Dated this 24 day of August, 2007.

18
19 (SEAL)



ARIZONA MEDICAL BOARD

20
21 By: 

22 Timothy C. Miller, J.D.
Executive Director

23 Original of the foregoing filed this
24 24 day of August, 2007, with:

25 Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, AZ 85258

1 Copy of the foregoing filed this
2 7th day of August, 2007, with:

3 Cliff J. Vanell, Director
4 Office of Administrative Hearings
1400 W. Washington, Ste. 101
Phoenix, AZ 85007

5 Executed copy of the foregoing mailed
6 by US Mail this 7th day of August,
2007, to:

7 Thomas J. Grade, M.D.
8 (Address of record)

9 Dean Brekke
10 Assistant Attorney General
Office of the Attorney General
CIV/LES
11 1275 W. Washington
Phoenix, Arizona 85007

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